

From: Judi Barrett (Home Office) [judith.barrett@cloverset.org]
Sent: Sunday, October 22, 2006 2:04 PM
To: Roland Bartl
Subject: Comments on draft affordable housing bylaw
Hi Roland,

Thanks for sending your draft affordable housing bylaw. I read it with great interest and enthusiasm, and I inserted a number of comments, suggestions and questions for you to consider.

All of us are struggling with ways to use zoning as a vehicle for creating affordable housing. Although I remain a strong advocate for mandatory inclusion, I've changed my thinking a lot about what it means for developers and what we should be doing in the realm of cost offsets. Last year, I had occasion to research inclusionary zoning outside of Massachusetts and I was stunned. I collected about 40 inclusionary ordinances and created a comparison matrix of their major features. After hearing Jon Witten's recurring argument that other states "simply require developers to provide affordable units, period," I discovered that he was part-right but mostly wrong. It's true that communities in many states have mandatory inclusion policies, but nearly all of them provide cost offsets as a matter of right: additional density, fee waivers, streamlined permitting, etc. They also provide fairly generous incentives to include rental units for very-low-income households, and they allow developers to create "credit" units, i.e., if the developer provides more than the minimum required number of affordable units, he may use the extra units as a "credit" to reduce his requirement in another project.

I recently wrote an ordinance for Beverly with a credit provision, largely because the local developers suggested it. We met with them early on (developers, most of the local land use attorneys, engineers and architects -- it was quite a crowd) and despite what people think about what developers really want, they were less insistent about extra density than about predictability, assurances, and flexibility to deal with unique circumstances on a site. (Ron Peabody's comments in our Acton meeting come to mind!) We also created a transfer option to locate affordable units in areas described in the master plan as suitable for higher-density development (i.e., to transfer the inclusion requirement from a lower-density zone to a higher-density zone), and we included the ability to create some additional market-rate units for each affordable unit built in/adjacent to the downtown or one of the neighborhood commercial areas, where the train stations happen to be located. Still, the whole process made me think long and hard about trade-offs; on one hand, we don't want to encourage extra density in areas that can't or shouldn't have it, but sometimes I wonder if we're being unfair when we essentially guide low- and moderate-income housing to densely developed places and away from the lower-density neighborhoods where people of means can choose to live. These are the things I wrestle with when I'm driving home from meetings at night. I don't think there's a great solution, and I really don't think there's one solution that fits all communities.

I respect your concerns about requiring developers to provide affordable units. Your draft bylaw does a lot to provide incentives and the good thing is, it's substantially consistent with the comprehensive permit policy, so the Town isn't offering more or less to an applicant who chooses one permitting tool over the other. One wonders why a developer would bother with a comprehensive permit if he can use the zoning option instead, but who knows...and really, who cares? Anyway, it looks good. Use any of my comments that help, and forget the rest!

Hope all is well. I'm swamped, as always.

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ARTICLE Z1

(Two-thirds vote)

AMEND ZONING BYLAW AND MAP -

CREATION OF AFFORDABLE HOUSING OPPORTUNITIES

For a summary please go to the end of the document.

To see if the Town will vote to amend the zoning map and zoning bylaw as set forth in this article:

I. Removal of existing Affordable Housing Overlay District:

- A. Zoning Map: Delete Map Number 4 of The Zoning Map thereby removing the AFFORDABLE HOUSING OVERLAY DISTRICT designation, including designations for Sub-Districts A and B, from all lots and parcels.
- B. Zoning Bylaw: In section 2.1 – **Classification of Districts**, delete the words “AFFORDABLE HOUSING OVERLAY DISTRICT” under the OVERLAY DISTRICT category.
- C. Zoning Bylaw: In section 2.2 – **Zoning Map**, delete the 4th bullet, which begins with “Affordable Housing Overlay District Map of the Town of Acton”.
- D. Zoning Bylaw: In section 3.3 – **Residential USES**, paragraph c), delete the words “an AFFORDABLE housing development UNDER SECTION 4.4 OF THIS Bylaw;”.
- E. Zoning Bylaw: In section 4.2 – **Open Space Development**, subsection 4.2.3.1.a), delete the fourth sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- F. Zoning Bylaw: In section 4.2 – **Open Space Development**, subsection 4.2.3.1.b), delete the second sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- G. Zoning Bylaw: In section 4.3 – **GROUNDWATER Protection District**, Table 4.3.7.2, Note (**), delete the section reference numbers “4.4.”.
- H. Zoning Bylaw: Delete section 4.4 – **AFFORDABLE Housing Incentives and Overlay District** in its entirety, including all its subsections.
- I. Zoning Bylaw: In section 6.2 – **Parking Standards - General Provisions**, delete the words “a MAJOR AFFORDABLE Housing Development (Section 4.4) and”.
- J. Zoning Bylaw: In section 9.6 – **Planned Conservation Residential Community – Standards for PCRCs**, subsection 9.6.2.1.a), delete the fourth sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- K. Zoning Bylaw: In section 9.6 – **Planned Conservation Residential Community – Standards for PCRCs**, subsection 9.6.2.1.b), delete the second sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- L. Zoning Bylaw: In section 9.6 – **Planned Conservation Residential Community – Standards for PCRCs**, delete subsection 9.6.2.3.e) in its entirety.

II. Creation of Affordable Housing Opportunities

A. Amend and add definitions as follows:

- 1. Zoning Bylaw: In section 1.3 – **Definitions**, delete sub-section 1.3.2 and replace it with new sub-sections 1.3.2 as follows:

1.3.2 AFFORDABLE
DWELLING UNIT

A dwelling unit, which is affordable to and occupied by a LOW- OR MODERATE-INCOME HOUSEHOLD; meets the requirements of the Massachusetts Department of Housing and Community Development Local Initiative Program (LIP) for inclusion on the Chapter 40B Subsidized Housing Inventory for Acton; and is restricted in perpetuity to the sale, lease, or rental, including resale, re-lease, and re-rental at reduced prices affordable to LOW- OR MODERATE-INCOME HOUSEHOLDS.

2. Zoning Bylaw: In section **1.3 – Definitions**, insert a new sub-section 1.3.3 as follows:

1.3.3 AFFORDABLE
HOUSING
OPPORTUNITY
PROJECT

A housing development with at least 25% AFFORDABLE HOUSING UNITS except as otherwise provided in section 9C.

Comment [JAB1]: Do you want to say "dwelling" here to be consistent with 1.3.2? Or, you could add to Section 1.3.2 something like this: "In this Bylaw, 'affordable dwelling unit' shall be synonymous with 'affordable housing unit.'"

And renumber existing sub-sections 1.3.3 through 1.3.20 to become sub-sections 1.3.4 through 1.3.21 respectively.

3. Zoning Bylaw: In section **1.3 – Definitions**, delete sub-sections 1.3.13, and 1.3.14, renumbered in C. above to 1.3.14 and 1.3.15, and replace them with new sub-sections 1.3.14, and 1.3.15 as follows:

1.3.14 LOW- OR
MODERATE-INCOME
HOUSEHOLD

Alternatively, LOW AND MODERATE INCOME HOUSEHOLD. A household with a total aggregate income at or below 80% of the median income, adjusted for household size, as determined by HUD (U.S. Dept. of Housing And Urban Development) for the Boston Primary Metropolitan Statistical Area, which includes Acton, and computed pursuant to Local Initiative Program Guidelines promulgated from time to time by the Massachusetts Department of Housing and Community Development (DHCD) under 760 CMR 45.00.¹ Sub-categories are defined as -

- VERY LOW-INCOME:
A household with a total aggregate income at or below 30% of the area median income as defined above.
- LOW-INCOME:
A household with a total aggregate income between 31% and 50% of the area median income as defined above.

¹ I recommend that you reword this as follows: "Alternatively, LOW AND MODERATE INCOME HOUSEHOLD. A household with a total aggregate income at or below 80% of the median income, adjusted for household size, for the metropolitan or non-metropolitan area that includes the Town of Acton as determined by the U.S. Department of Housing and Urban Development (HUD), and computed pursuant to..." The metro area designations change, and they seem to change with increasing frequency. HUD no longer refers to the Boston PMSA. In fact, Acton is in what HUD now calls the Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area. Also, I think you should replace "Guidelines" with "Regulations." 760 CMR 45.00 is a body of regulation. It is true that LIP also publishes policy guidelines, but the guidelines do not have the force of law and they're vulnerable to policy swings from administration to administration.

- **MODERATE-INCOME:**

A household with a total aggregate income between 51% and 80% of the area median income as defined above.

1.3.15 MIDDLE INCOME HOUSEHOLD

A household with a total aggregate income between 80% and 120% of the median income, adjusted for household size, as determined by HUD (U.S. Dept. of Housing And Urban Development) for the Boston Primary Metropolitan Statistical Area,² which includes Acton, and computed pursuant to Local Initiative Program Guidelines promulgated from time to time by the Massachusetts Department of Housing and Community Development (DHCD) under 760 CMR 45.00.

B. Insert a new Zoning Bylaw section 9C as follows:

SECTION 9C

AFFORDABLE HOUSING OPPORTUNITY PROJECTS

9C.1 Purpose – Whereas,

- Massachusetts General Law Ch. 40B, §§20-23 provides for AFFORDABLE housing with Comprehensive Permits that override local zoning regulations, which are deemed to make AFFORDABLE housing economically infeasible in cities and towns with less than 10% AFFORDABLE housing;
- Acton as of 2007 has not yet reached 10% AFFORDABLE housing and, when reached in the future, continuous efforts are needed to maintain a level above 10%;
- there has been an increase of Comprehensive Permit applications in Acton in recent years;
- a proliferation of Comprehensive Permit housing developments may occur in a manner that is substantially inconsistent with the Acton Master Plan;
- there has been a disproportionate rise in market rate home prices relative to the area's median household income;
- a significant portion of all Acton households are "housing cost burdened" paying more than 30% of their income for housing (the national standard limit for affordability to low to median income households)³, with LOW-INCOME households, seniors, and renters being affected disproportionately;

² Again, I recommend a similar change here. I have an additional suggestion, though. You may want to say something like this: "...computed pursuant to regulations of the Local Initiative Program Regulations under 760 CMR 45.00, or as may be determined by the Acton Planning Board following a public hearing and recorded with the Town Clerk." The concern is simply that HUD doesn't publish income limits up to 120%...to avoid disputes, you might want to establish your own internal income limits for middle-income housing and do so administratively. Citing up to 120% of area median income sets an upper limit, so it isn't as though the Planning Board could adopt something really out of line (and officials in Acton don't do that sort of thing anyway!).

³ Purely FYI – although DHCD required all of us to apply the 30% standard to low-, moderate- and middle-income households when we prepared EO 418 plans, the official HUD definition of housing cost burdened applies to low- or moderate-income households. The 30% standard stems from the Housing and Community Development Act of 1968, when affordability was actually defined as 25%. It has changed from time to time as the federal government gradually reduced its share of housing payments under the Section 8 Voucher Program.

- by conventional loan underwriting practices a median income household in Acton could not afford the purchase of a median priced home, falling short at about 60% of the required income;
- nearly two-thirds of all Acton households could not afford to purchase a median priced home without significant prior savings or other assets;
- there is a lack of two- and three-bedroom apartments that are AFFORDABLE to median or below median income renters limiting their housing choices and thwarting their ability to save for homeownership;
- there is a growing body of evidence that this affordability gap, which is not unique to Acton, causes economic stress to the Commonwealth of Massachusetts and the region in which Acton is part of;
- the Acton Master Plan encourages commercial and business development in Acton's Village and Kelley's Corner zoning districts;
- residential developments in and near those centers supports their commercial viability;
- a ½ mile is generally considered a reasonable walking distance;
- improved pedestrian connectivity within a ½ mile of the Village and Kelley's Corner districts helps reduce local vehicular traffic within those areas;

Therefore, this Section 9C is intended to enhance the public welfare and help close the housing affordability gap by providing opportunities and encouragement for the production of AFFORDABLE DWELLING UNITS for primarily LOW- AND MODERATE-INCOME households with a result that is in compliance with the Acton zoning bylaw and substantially consistent with the Acton Master Plan.

9C.2 Regulatory Controls – An AFFORDABLE HOUSING OPPORTUNITY PROJECT under this section 9C shall be subject to the following review, oversight, and special permit functions of the Planning Board. To facilitate the creation of affordable housing the Planning Board, in exercising its authority hereunder, may waive specific requirements of this Bylaw, except for requirements set forth in this section 9C. However, the Planning Board shall exercise this authority with careful restraint and deliberate inquiry on each such waiver ensuring that it grants only the minimum necessary number of waivers to the minimum necessary extent. In evaluating an AFFORDABLE HOUSING OPPORTUNITY PROJECT the Planning Board shall give heavy weight to the need for consistency with the Town of Acton Master Plan and for sensitivity in design to the neighborhood context in which it is proposed, while also seeking to balance those needs with the realistic parameters for economic project feasibility.

In cases where the proposed AFFORDABLE HOUSING OPPORTUNITY PROJECT would require other special permits or variances under this Bylaw, the applications and hearing processes for them shall be combined into one application and hearing for a Special Permit or Site Plan Special Permit hereunder and shall be combined and administered as a unified application and hearing process under the authority of the Planning Board. If approved hereunder, an AFFORDABLE HOUSING OPPORTUNITY PROJECT shall not require additional special permits or variances under this Bylaw.

In cases where the proposed AFFORDABLE HOUSING OPPORTUNITY PROJECT is also a subdivision as defined in the Acton Subdivision Rules and Regulations and M.G.L. Ch.41, s. 81K-81GG the processes and documentation for this Site Plan Special Permit and the subdivision shall be combined into one

9C.14.1 If Acton's affordable housing stock is 10 percent or less of the total housing stock as certified periodically by the Massachusetts Department of Housing and Community Development (DHCD) in its Chapter 40B Subsidized Housing Inventory for Acton, AFFORDABLE HOUSING OPPORTUNITY PROJECTS shall be subject to a Site Plan Special Permit.

9C.2.1.1 The Planning Board shall act as the Site Plan Special Permit Granting Authority under the provisions for Site Plan Special Permits set forth in section 10.4 of this Bylaw and the Acton Site Plan Rules and Regulations with all the powers and duties otherwise assigned to the Board of Selectmen under said section 10.4.

9C.2.1.2 The Planning Board may waive specific requirements of section 10.4 with the same scrutiny, restraint, and inquiry as required for waivers from other sections of this Bylaw.

9C.2.1.3 The time frames for a public hearing and decision shall be shortened to those provided for non-residential subdivision plans under the Acton Subdivision Rules and Regulations and M.G.L. Ch.41, s. 81K-81GG. Such time frames may be extended by mutual agreement between the Board and the project proponent.

9C.2.1.4 The purpose of this review process is not to decide whether a Site Plan Special Permit for a proposed AFFORDABLE HOUSING OPPORTUNITY PROJECT should be granted or not. Rather, the purpose is to review the project's layout; building design; affordable housing contribution; deed restrictions; project phasing; impact mitigation; Master Plan consistency; neighborhood integration; natural resource protection; groundwater protection measures; and all other matters relevant and important to ensure a functional and well-designed project that permanently contributes to Acton's affordable housing stock. The Planning Board may attach appropriate conditions to a Site Plan Special Permit in order to achieve these objectives. Denials of this Site Plan Special Permit shall be limited only to cases where the Planning Board finds that these objectives have not been met or cannot be met after the applicant has been given adequate opportunity to amend the project plan and proposal to address the issues of concern to the Planning Board.

Comment [JAB2]: "...should be granted." Adding "or not" is redundant.

Comment [JAB3]: I think this should say, "...creates permanently affordable housing for low- or moderate-income households."

9C.14.2 If Acton's affordable housing stock is in excess of 10 percent of the total housing stock as certified periodically by the Massachusetts Department of Housing and Community Development (DHCD) in its Chapter 40B Subsidized Housing Inventory for Acton, the APPROVAL OF AFFORDABLE HOUSING OPPORTUNITY PROJECT shall be subject to a discretionary special permit from the Planning Board, which it may grant or deny under the standards for special permits set forth in section 10.5 of this Bylaw. In addition to the required findings for a special permit under section 10.5 the Planning Board shall find in the affirmative at least three of the following tests:

9C.2.2.1 Without approval of further AFFORDABLE HOUSING OPPORTUNITY PROJECTS Acton's certified affordable housing stock is likely to fall to 10% or below within the following three calendar years, including the year in which the application has been filed, assuming a continuation of the market rate unit growth during the preceding three completed calendar years.

- 9C.2.2.2 The Affordable Housing Opportunity Project is particularly well conceived in terms of building design and site layout.
- 9C.2.2.3 The project, despite its higher than average density, is designed with a high degree of sensitivity to the neighborhood context in which it is proposed.
- 9C.2.2.4 In addition to providing affordable housing, the project has the potential of becoming an asset to the neighborhood and the Town because it brings exceptional improvements, amenities, or other advantages from which residents of the neighborhood and the Town in general will derive a benefit.
- 9C.14.3 When the Planning Board approves an Affordable Housing Opportunity Project under sections 9C.3.1 or 9C.3.2 above, it shall ensure:
- 9C.2.3.1 The mitigation of vehicular traffic impacts where necessary. Any required improvements to STREETS and roadways shall be measured in reasonable proportion to the size and impacts of the project, generally not in excess of \$2000 under section 9C.3.1, and \$4,000 under section 9C.3.2, for each bedroom in the market-rate DWELLING UNITS.
- 9C.2.3.2 Pedestrian amenities, and safe pedestrian and, where possible, bicycling connectivity from the project site to Acton's Village and Kelley's Corner Districts, other business areas, schools, libraries, conservation land access points, parks, playgrounds, ball fields, and other community facilities. Generally, this shall include pedestrian amenities within the project, a sidewalk along the FRONTAGE of the project site, which may include where appropriate the reconstruction of an existing sidewalk, plus for each market-rate DWELLING UNIT 100 feet of sidewalk on a STREET under section 9C.3.1, and 200 feet of sidewalk on a STREET under section 9C.3.2.
- 9C.2.3.3 Outdoor play and recreation opportunities for children in projects with 40 or more DWELLING UNITS.
- 9C.2.3.4 Building and site design that is appropriate and sensitive in the context of the area or neighborhood in which the project is proposed.
- 9C.2.3.5 Adequate protections for natural resources, especially groundwater resources. In general, the standards of section 4.3 shall apply, but the Planning Board may grant waivers from its specific requirements provided that the performance standards and goals of section 4.3 are met through alternative means.
- 9C.2.3.6 The preservation of significant or outstanding historic buildings and other cultural resources on site, or moved to a nearby location deemed appropriate by the Planning Board after consultation with the Historical Commission. The separate and independent authorities of the Historical Commission and the Historic District Commission under Town Bylaws Chapter N and P respectively, remain in full effect.
- 9C.2.3.7 Permanent and perpetual price and rental restrictions on at least 25% of the DWELLING UNITS in the form of deed restrictions, regulatory agreements, deed riders, discount rate certificates, and any other necessary measures and documents to ensure that they meet the definition of AFFORDABLE DWELLING UNITS of this Bylaw, qualify for certification as affordable units in the Chapter 40B Subsidized Housing Inventory for Acton published from

Comment [JAB4]: Why tie these payments to number of bedrooms? It seems to me that this creates an incentive for small (child-proof) housing units. I assume you're trying to correlate bedrooms with number of vehicles and hence, traffic impacts, but the phrase "be careful what you ask for" comes to mind.

time to time by the Massachusetts Department of Housing and Community Development (DHCD), and will remain so certified upon resale, re-lease, and re-rental.

- 9C.2.3.8 A Right of First Refusal on the AFFORDABLE DWELLING UNITS to the Town of Acton or its designee at the restricted resale value, including a requirements that the owner provides notice of such Right of First Refusal to the Town of Acton or its designee prior to the sale the AFFORDABLE DWELLING UNITS, with adequate time for the Town or its designee to exercise the Right of First Refusal.

9C.3 AFFORDABLE HOUSING OPPORTUNITY PROJECTS in the Village and Kelley's Corner Districts – In the EAV, EAV-2, NAV, SAV, WAV and KC Districts AFFORDABLE HOUSING OPPORTUNITY PROJECTS shall be subject to the following specific requirements and limitations:

- 9C.3.1 The applicable requirements for maximum front yard setbacks in section 5 of this Bylaw shall apply.
- 9C.3.2 The applicable minimum height requirements in section 5 of this Bylaw shall apply.
- 9C.3.3 The height for BUILDINGS shall not exceed 36 feet in a Village District and 45 feet in the Kelley's Corner District.
- 9C.3.4 Parking lots or driveways shall not be located between the principal BUILDING or BUILDINGS and a STREET, but the Planning Board may allow variations from this rule in cases where a LOT has STREET FRONTAGE on opposite sides or FRONTAGE on more than two sides, or where the topography on the LOT makes it impossible to comply with this rule.
- 9C.3.5 AFFORDABLE HOUSING OPPORTUNITY PROJECTS shall consist of multi-family, multi-story buildings, except that the ground floor of a BUILDING front that faces a STREET and is within the immediate vicinity of a STREET shall be designed and reserved for occupancy, by Retail Stores; Restaurants; Lodges or Clubs; Services; Commercial Entertainment; real estate agencies; insurance agencies; travel agencies; law offices; medical and dental offices; walk-in clinics; small equipment repair services; tailors; or photography studios or similar USES or businesses.
- 9C.3.6 The FLOOR AREA RATIO shall not exceed 0.80 in a Village District and 1.00 in the Kelley's Corner District, without counting the NET FLOOR AREA for the business space, which is on the ground floor of a BUILDING front facing a STREET, and which has direct and exclusive customer access from the STREET.

Comment [JAB5]: Or other natural constraints?

Comment [JAB6]: Do you mean "economically infeasible," or "not commercially reasonable"? What does "impossible" mean? I can see this being a debatable standard.

Comment [JAB7]: GOOD!

9C.4 AFFORDABLE HOUSING OPPORTUNITY PROJECTS in Residential Districts within a half mile from the Village and Kelley's Corner Districts – AFFORDABLE HOUSING OPPORTUNITY PROJECTS located on parcels of land in Residential Districts, any portion of which is located within a ½ mile of a boundary of a Village District or within a ½ mile of the boundary of the northerly part of the Kelley's Corner District, which surrounds the Routes 27 and 111 intersection, shall be subject to the following specific requirements and limitations:

- 9C.4.1 The height of BUILDINGS shall not exceed 36 feet.
- 9C.4.2 The FLOOR AREA RATIO shall not exceed 0.80.

- 9C.4.3 In the R-2, R-4, R-8/4, R-8, R-10/8, and R-10 Districts, DWELLING UNITS shall be arranged in single-family, two-family, or townhouse style homes unless located immediately abutting a Village or Kelley's Corner District boundary.
- 9C.4.4 There shall be no commercial component except in Residential District locations immediately abutting a Village or Kelley's Corner District boundary and in Business District locations. Such commercial component shall comply with the provisions for commercial space in AFFORDABLE HOUSING OPPORTUNITY PROJECTS in the Village and Kelley's Corner Districts without the exemption of business NET FLOOR AREA from the FLOOR AREA RATIO calculation.

9C.5 AFFORDABLE HOUSING OPPORTUNITY PROJECTS with the reuse of vacant or underutilized commercial BUILDINGS in Business, Office, and Industrial Districts within a half mile from the Village and Kelley's Corner Districts – In the Office, Business, and Industrial Districts AFFORDABLE HOUSING OPPORTUNITY PROJECTS may be created by conversion to residential USE of existing vacant or underutilized commercial or industrial BUILDINGS on parcels of land, any portion of which is located within a ½ mile of a boundary of a Village District or within a ½ mile of the boundary of the northerly part of the Kelley's Corner District, which surrounds the Routes 27 and 111 intersection, shall be subject to the following specific requirements and limitations:

- 9C.5.1 The proponent for an AFFORDABLE HOUSING OPPORTUNITY PROJECT must be able to document a BUILDING vacancy rate of at least 60% during the three preceding years despite aggressive marketing efforts to fill the vacancies with commercial tenants.
- 9C.5.2 A Massachusetts registered Architect shall certify that the BUILDING is suitable for rehabilitation and conversion to residential USE.
- 9C.5.3 New construction or demolition and replacement of BUILDINGS shall not qualify, except for partial demolition not in excess of 20% of the existing NET FLOOR AREA and the replacement thereof.

9C.6 Varying Levels of Affordability – This section 9C requires that at least 25% of the units in an AFFORDABLE HOUSING OPPORTUNITY PROJECT must be AFFORDABLE DWELLING UNITS as defined under this Bylaw. The Planning Board may approve exceptions from this requirement as follows:

- 9C.6.1 The Planning Board may reduce the percentage of AFFORDABLE DWELLING UNITS to 20% if all such units are price restricted to be affordable under conventional loan underwriting practices to LOW-INCOME HOUSEHOLDS as defined under in this Bylaw.
- 9C.6.2 The Planning Board may reduce the percentage of AFFORDABLE DWELLING UNITS to 15% if all such units are price restricted to be affordable under conventional loan underwriting practices to VERY LOW-INCOME HOUSEHOLDS as defined under in this Bylaw.
- 9C.6.3 The Planning Board may reduce the percentage of AFFORDABLE DWELLING UNITS to any number between 15% and 25% in proportion to the provisions of VERY LOW-, LOW-, AND MODERATE-INCOME units.

Comment [JAB8]: You refer to "prices" here, which implies that the units will be for-sale units. What about rents? Also, I strongly recommend that "affordable under conventional loan underwriting practices" be changed to "affordable in accordance with LIP regulations," or something to that effect. LIP has requirements for maximum downpayment, fixed-rate mortgage, etc. "Conventional" includes adjustable-rate mortgages; the term is debatable and I think you should opt for an explicit reference.

Comment [JAB9]: Wouldn't it be easier to just say this instead of including 9C.6.1 and 9C.6.2?

9C.6.4 The Planning Board may allow or require the conversion of one or more of the required AFFORDABLE DWELLING UNITS to be priced at a higher level but affordable under conventional loan underwriting practices to MIDDLE INCOME HOUSEHOLD as defined under in this Bylaw. However, while there is a need for middle-income priced units, such units do not qualify for certification as affordable units in the DHCD Chapter 40B Subsidized Housing Inventory for Acton. Therefore, the Planning Board shall consider this exception provision only in very limited circumstances and in very limited numbers, particularly for AFFORDABLE HOUSING OPPORTUNITY PROJECTS under section 9C.2.1.

9C.7 **Locations and compatibility** – AFFORDABLE DWELLING UNITS shall be dispersed throughout the development to insure a true mix of market-rate and AFFORDABLE DWELLING UNITS. The exterior of AFFORDABLE DWELLING UNITS shall be compatible with, and as much as possible indistinguishable from, market-rate DWELLING UNITS. All internal design features of AFFORDABLE DWELLING UNITS shall be substantially the same as those of market-rate DWELLING UNITS.

Comment [JAB10]: Why not just say, "The exterior of the affordable dwelling units shall be indistinguishable from..."? As for interior design, I think you should tread carefully here. Do you mean to say that interior amenities must be the same – including the very high-grade finishes that may be used to make the market-rate units sell for the highest possible price? Equality of interior finishes, fixtures and amenities could be very problematic if the developer is using a housing subsidy to make the affordable units affordable. I can tell you a few "war stories" about this if you're interested.

9C.8 **Timing of construction** – As a condition of the issuance of a Site Plan Special Permit or Special Permit under this Section, the Planning Board may set a time or development schedule for the construction of AFFORDABLE DWELLING UNITS and market-rate DWELLING UNITS.

9C.9 **Public Funding Programs** – Applicants for a Site Plan Special Permit or Special Permit for an AFFORDABLE HOUSING OPPORTUNITY PROJECTS may elect to seek public subsidies from Federal, State, or local agencies to assist with the production of AFFORDABLE DWELLING UNITS. AFFORDABLE DWELLING UNITS funded with any such subsidies may be subject to stricter affordability requirements than those of this Bylaw. Nothing herein shall be construed as waiving such funding agency requirements.

Comment [JAB11]: This is good, but per my comment above, some subsidy programs would deny funds to a project with high-grade interior finishes/amenities in affordable units. The basis for denial would be that public subsidies are supposed to fill a gap, and a larger-than-necessary gap has been "created" by the high cost of construction of affordable units. This very issue came up recently in another town.

9C.10 **Local Preference** – To the maximum extent practical and subject to applicable Federal or State financing or subsidy programs, the AFFORDABLE DWELLING UNITS shall be initially offered to qualified LOW- AND MODERATE-INCOME HOUSEHOLDS that meet local preference criteria established from time to time by the Town of Acton or the Acton Community Housing Corporation. Procedures for the selection of purchasers and/or tenants shall be subject to approval by the Planning Board or its designee, which is the Acton Community Housing Corporation unless otherwise specified. The local preference restriction shall be in force for 120 days from the date of the first offering of sale or rental of a particular AFFORDABLE DWELLING UNIT. The applicant shall make a diligent effort to locate eligible purchasers or renters for the AFFORDABLE DWELLING UNIT who meet the local preference criteria and the applicable income requirements.

Comment [JAB12]: Specified where – in Planning Board regulations?

9C.11 **Agreements, Restrictions, and Covenants** – Any contractual agreements with the Town of Acton, the documents necessary to insure the long term affordability of the AFFORDABLE DWELLING UNITS, and all other documents, restrictions, covenants, and agreements required by the Planning Board in its Special Permit or Site Plan Special Permit shall be executed and recorded prior to the issuance of any building permit in an AFFORDABLE HOUSING OPPORTUNITY PROJECT.

Comment [JAB13]: Just remember that for the homeownership deed rider, the more appropriate control is an occupancy certificate because it's impossible for the developer to execute a deed rider at the Site Plan Special Permit phase. There has to be a "live" homebuyer to sign a deed rider.

9C.12 **Protection of Residency** – Nothing in this Section shall be construed to cause eviction of an owner or tenant of an AFFORDABLE DWELLING UNIT due to loss of his/her

income eligibility status during the time of ownership or tenancy. Rather, the restrictions governing an AFFORDABLE DWELLING UNIT shall be enforced upon resale, rental, or re-lease of the AFFORDABLE DWELLING UNIT as provided in the applicable deed restrictions, deed riders, and regulatory agreements.

9C.13 Accessibility – In the absence of Federal or State accessibility requirements, the Planning Board may require as a condition of a Site Plan Special Permit or Special Permit under this Section, that certain AFFORDABLE DWELLING UNITS shall be accessible or adaptable for occupancy by persons with disabilities.

9C.14 Housing And Infrastructure Contributions – The Planning Board in a Special Permit or Site Plan Special Permit may in appropriate circumstances authorize monetary contributions to the Town of Acton in lieu of providing AFFORDABLE DWELLING UNITS and required mitigation and infrastructure improvements as follows:

9C.14.1 Where the minimum percentage requirements for AFFORDABLE DWELLING UNITS result in a surplus fraction of a unit above a whole number, the Planning Board may, in lieu of providing another whole AFFORDABLE DWELLING UNIT in the project, accept a contribution that is equivalent to the market rate value of the surplus unit fraction as determined by the Planning Board. This contribution shall be made for the specific purpose of providing funding in support of affordable housing development and retention in the Town of Acton.

9C.14.2 In cases where the Planning Board finds it inappropriate or impractical at the given time and location to implement traffic mitigation, infrastructure improvements, or amenities as required in this section 9C, the Planning Board may accept monetary contributions of equivalent value as determined by the Planning Board. This contribution shall be generally for the purpose of providing funds in support of traffic and infrastructure improvements in the Town of Acton.

9C.15 Pre-Application Consultation – The Acton Community Housing Corporation and the Acton Planning Department staff are available for preliminary and pre-application consultations. The proponent of an AFFORDABLE HOUSING OPPORTUNITY PROJECT is encouraged to make use of these resources.

Comment [JAB14]: But to remain eligible for the Subsidized Housing Inventory, rental units must be monitored annually for two conditions: the rent is affordable, and the tenants are income-eligible to occupy the unit. If it's an all-rental development, the owner can designate another market-rate unit as affordable if one of the affordable units is occupied by a family that happens to become "over-income," but from time to time, you could have a project with a mix of owners and tenants, especially under current market conditions. I don't disagree at all with the purpose of this provision, but I think you should make it clear that the project overall must retain a percentage of affordable units that is consistent with the Site Plan Special Permit.

, or take any other action relative thereto.

SUMMARY DISCUSSION

- (this is not a Town Meeting warrant article summary) -

The foregoing is a draft zoning article intended to replace the existing Affordable Housing Overlay District of the Zoning Bylaw. It is not inclusive of all options that were discussed or recommended in the "To Live in Acton" report. In fact, the particular approach taken in this draft may not be one that was thought of in the report. Nevertheless, elements of the report's recommendations are incorporated here. Other elements would be left to another time, primarily for the sake of making things not more complicated than they already are.

It was important to the Planning Board that their proposal for affordable housing zoning be as consistent as possible with the overarching goal and tenet of the Master Plan. Therefore, this zoning proposal focuses on the Village and Kelley's Corner districts, as well as the parcels of land that touch within a ½-mile radius of them, i.e. walking distance. A zoning map with the ½-mile radii is

provided (separate document attached to the e-mail with which this draft has been distributed) to generally indicate the targeted areas, which includes parcels within the radii as well as parcels that the radii touch. Not all areas in or on the radii are available. For instance, the ARC zoning district (green color on zoning map) is not available.

The zoning proposal is intended to be consistent with the Town's 40B Policy, and it seeks to make the local zoning option a highly competitive alternative to 40B in the identified areas.

Comment [JAB15]: Town's (insert apostrophe)

Part I of the Article is largely a clean-up process removing the current Affordable Housing District provision and map, and related elements and references that are scattered throughout the zoning bylaw.

Part II starts with some revised and some new definitions for Affordable Housing, Low Income, Moderate Income, etc. which are now believed to be consistent with DHCD definitions. Thus, affordable units provided under this proposed zoning amendment would easily count towards Acton's affordable housing inventory.

Part II of the Article then continues with the real substance of the proposed zoning initiative. Major concepts are:

1. Similarities to 40B approach:

- a. Significantly increased densities to help "finance" affordable units.
- b. 25% percent minimum affordable unit share per project. Waivers of otherwise applicable zoning regulations, particularly density limits, but "with careful restraint and deliberate inquiry". New standards are introduced, but with the exception of higher density caps, they are very flexible and give the Board broad powers to help shape a successful project.
- c. 10% affordable housing in Town as a benchmark.

Comment [JAB16]: A period should be placed inside quotation marks, not outside

2. Different processes depending on where the Town stands v. 10% benchmark. This acknowledges that Chapter 40B is a formidable competitor that does not have to be responsive to any local rules if the Town's affordable housing stock is, or has fallen below 10%.

- a. If below 10% -
 - Site plan review only, which does not give power of denial on grounds of the proposed use.
 - Accelerated review and hearing schedule that cuts of +/-2 months of special permit process and brings it closer in line with the time frame for 40B projects (still 20 days shorter).
 - All other zoning special permits waived or folded into site plan review.
- b. If above 10% -
 - Discretionary use special permit that can be denied on grounds of the proposed use, but provides a vehicle to let desirable projects go ahead.
 - Standard special permit time frame.

- Standard special permit findings must be in the affirmative, plus three out of four additional findings must be in the affirmative: danger of Town falling below 10%, exceptional design, neighborhood sensitivity, additional desirable amenities.

3. High density projects in or near village districts and Kelley's Corner:

- a. 0.80 maximum FAR in village district (standard limits for all other uses vary from 0.20 to 0.70).
- b. 1.00 maximum FAR in Kelley's Corner (standard is 0.20; or 0.40 with KC design requirements)
- c. 0.80 FAR within ½ mile of village and KC district (recognizing that available developable land in villages is limited; and consistent with walkability guideposts)

4. Project density measured in FAR and bedroom count, not unit count.

5. Mixed-use residential/commercial projects required in village centers, and allowed on lots immediately adjacent to village centers.

6. Reuse for affordable housing of vacant or underutilized commercial buildings within ½ mile of Village and KC Districts.

7. Variability in Affordable Unit percentages depending on unit pricing to provide affordability to the range of target households from very low to middle income.

8. In-lieu contribution for affordable unit fractions and for infrastructure improvements.

Direct inquiries to: Roland Baril, AICP, Town Planner – (978) 264-9636

Selectman assigned:

Board of Selectmen: Recommendation Deferred

Finance Committee: Not Recommended

Planning Board: Recommended